No._____

CHAMBER OF COMMERCE

OF THE

UNITED STATES OF AMERICA

REFERENDUM No. 6

On the Question of the Establishment by Congress of a Bureau or Bureaus of Legislative Reference and Bill-Drafting.

NATIONAL HEADQUARTERS: RIGGS BUILDING
WASHINGTON, D. C.

November 8, 1913.

BY LAWS

ARTICLE X

SUBMISSION OF QUESTIONS

SECTION 1. All subjects considered or acted upon by this Chamber shall be national in character.

SECTION 2. All propositions, resolutions, or questions, except those which involve points of order or matters of personal privilege, shall be submitted for action in writing only by the organization members, or by the Council, or Board of Directors, provided that by consent of two-thirds of the delegates present at a meeting a subject not so presented may be considered.

SECTION 3. (**First Consideration.**) An organization member desiring to present a subject for the consideration of this Chamber shall commit its proposal to writing and forward it to the General Secretary.

It shall be the duty of the General Secretary to bring this question before the Board of Directors by mail or telegraph, or at its first meeting, whereupon the Directors shall order the question printed with such arguments as may be presented by the proposing member, unless it be the opinion of said Board that the question is not of national importance. If the Board of Directors decide that a question submitted by an organization member is not of national character and should not therefore be sent to the membership for consideration, the proposing member may appeal from the decision of the Board to the National Council at any meeting of that body, or by mail through the office of the General Secretary. If the National Council decides by a majority vote that the question should be referred to the membership it shall be incumbent on the Board of Directors to order its submission.

In ordering the question printed the Directors shall determine the length of the statement which may be submitted with it by the proposing member. The printed question and brief shall be transmitted to each member of this Chamber as soon as practicable, and simultaneously the General Secretary shall mail a copy to the National Councillor representing each organization member.

The question shall be accompanied by a notice from the General Secretary that each organization member is expected to express its opinion on the question in writing and mail said opinion to reach the National Headquarters within 45 days. In returning said opinion each organization member shall also register a preliminary or test vote on the subject. It may cast one such vote for each delegate to which it is entitled in the annual meeting. No vote shall be valid unless received by the General Secretary within 45 days of the date of the mailing of the question.

In forwarding the question it shall be the duty of the General Secretary to advise each organization member of the date on which the right to register votes expires.

SECTION 4. (**Immediate Action.**) If before the expiration of 45 days from the date the question and brief were sent out votes representing more than two-thirds of the voting strength of the organization membership are registered in favor of the proposition, the General Secretary shall immediately certify that fact to the Board of Directors. Thereupon, the question shall be recorded as having been approved by the Chamber and it shall be the duty of the Board of Directors to take such steps as may be necessary to make effective the action taken.

If at the expiration of 45 days one-third of the voting strength of the Chamber has been recorded and two-thirds of the vote thus cast representing at least twenty (20) states is in favor of the proposal the General Secretary shall so certify to the Board of Directors. Thereupon the question shall be recorded as having been passed and it shall be the duty of the Board to make the action effective.

SECTION 5. (**Further Consideration.**) If the question has failed to receive the votes necessary as set forth in the preceding section, but has received the approval of more than one-third of the votes cast it shall be sent out for further consideration under the following conditions:

(*a*) The opinions received from the various organization members shall be put in type and referred to the proposing member, said member shall have an opportunity to consider them and to add a final argument in support of its project, of such length as the Board of Directors shall prescribe.

(*b*) All of these opinions shall be assembled in a printed pamphlet, a copy of which shall be forwarded to each organization member and to each National Councillor.

(*c*) On receipt of the pamphlet it shall be the duty of each organization member to consider the whole project in the light of the opinions ex-

(*Continued on third page of cover.*)

385
C355r
no. 6

11 MAR 15

CHAMBER OF COMMERCE

OF THE

UNITED STATES OF AMERICA

REFERENDUM No. 6

On the Question of the Establishment by Congress of a Bureau or Bureaus of Legislative Reference and Bill-Drafting.

CONTENTS.

1. Statement of Question 1
   Resolution 1
   Question Submitted for Vote 1
   A Proposed Bill 1

2. Argument in Favor of Establishment of a Bureau or Bureaus of Legislative Reference and Bill-Drafting, Submitted by Railway Business Association 3

3. Accompanying Documents.
   A. Digest of State Laws 6

Alabama	7	New Hampshire	6
California	6	New York	6
Connecticut	6	North Dakota	7
Illinois	7	Ohio	6
Indiana	6	Oregon	7
Iowa	7	Pennsylvania	6
Kansas	7	Rhode Island	6
Maryland	7	South Dakota	7
Massachusetts	6	Texas	7
Michigan	7	Vermont	7
Montana	7	Virginia	7
Nebraska	7	Washington	7
		Wisconsin	6

   B. Foreign Analogies 8
   C. Excerpts from Debate in Senate 11
   D. Excerpts from Hearings 14

Lib. Sch.

REFERENDUM ON THE QUESTION OF THE ESTABLISHMENT BY CONGRESS OF A BUREAU OR BUREAUS OF LEGISLATIVE REFERENCE AND BILL-DRAFTING.

STATEMENT OF QUESTION.

In accordance with provisions of the by-laws of the Chamber, which are quoted on the inside of the cover of this pamphlet, an organization member, the Railway Business Association, has presented for the consideration of the Chamber the question of the establishment by Congress of a bureau or bureaus of legislative reference and bill-drafting. At the meeting in July the Board of Directors of the Chamber received an appropriate resolution of the Railway Business Association but postponed action that there might be opportunity for further consideration and correspondence. Accordingly, the Directors again considered the resolution at the meeting on October 13 to 15, decided the question presented is of national importance, and ordered that the question and the argument submitted by the Railway Business Association should be printed for a referendum vote.

The resolution of the Railway Business Association, dated June 10, 1913, is as follows:

> WHEREAS, So many thousand bills are annually introduced in Congress that adequate consideration of all of them is impracticable, involving constant danger that the most important matters will be neglected and grave errors committed;
>
> WHEREAS, Twenty-five of the States have legislative reference and bill-drafting bureaus designed to place at the disposal of the legislators comprehensive information about the literature and legislation on current subjects and to furnish upon request statutory language expertly drawn to effectuate the intent of the member proposing legislation;
>
> WHEREAS, The House Committee on Library of the 62nd Congress gave a hearing on bills for the establishment of such a bureau for Congress, at which a large number of authorities, including the British Ambassador and the Speaker of the House of Representatives, appeared in favor of such establishment; and no voice was raised against it, and committees of both Houses recommended legislation in this direction, but no action was taken by either branch; and several similar bills are pending in the 63rd Congress and the Senate Committee on Library has reported one of them favorably: In view of these facts,
>
> *Resolved,* That the General Executive Committee of the Railway Business Association requests the Board of Directors of the Chamber of Commerce of the United States of America to lay before the organization members of the Chamber by referendum the question of advocating the establishment of a Congressional reference and bill-drafting bureau or bureaus at the earliest moment consistent with thorough consideration.

ACCORDINGLY, THERE IS HEREWITH PRESENTED TO A REFERENDUM VOTE OF ORGANIZATION MEMBERS THE QUESTION OF THE ESTABLISHMENT BY CONGRESS OF A BUREAU OR BUREAUS OF LEGISLATIVE REFERENCE AND BILL-DRAFTING.

On June 17, 1913, there was reported to the Senate by its Committee on the Library with amendments a bill which proposes a form of legislative reference and bill-drafting bureau and which is now pending on the calendar of the Senate. The text of this bill as amended is printed below as an exhibit, not because the referendum vote is taken upon this or any other particular bill, but that members may have before them a concrete illustration of a form into which the underlying principles,—which alone are the subject of the resolution of the Railway Business Association and on which only the vote is taken,—might more or less imperfectly be incorporated.

A BILL

To establish the Legislative Reference Bureau of the Library of Congress.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created a bureau to be known as the "Legislative Drafting Bureau."

SEC. 2. That the said Bureau shall be under the direction of an officer, to be known as the "chief draftsman," to be appointed by the President of the United States, by and with the advice and consent of the Senate, without reference to party affiliations, and solely on the ground of fitness to perform the duties of the office. He shall receive a salary of $7,500 per an-

num, and shall hold office for the term of ten years unless sooner removed by the President upon the recommendation of the Judiciary Committee of both Houses of Congress, acting jointly.

SEC. 3. That there shall be in said bureau such assistants as Congress may from time to time provide. They shall be appointed by the chief draftsman solely with reference to their fitness for their particular duties.

SEC. 4. That public bills, or amendments to public bills, shall be drafted or revised by the said bureau on request of the President, any committee of either House of Congress, or of eight Members of the Senate or of twenty-five Members of the House of Representatives. The Judiciary Committees of both Houses of Congress acting jointly may, from time to time, prescribe rules and regulations for the conduct of the said bureau, including provision for drafting and revision upon such other requests as may be deemed advisable.

SEC. 5. That the chief draftsman shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the maintenance of the said bureau, and shall make to Congress at the beginning of each regular session a report as to the affairs of the said bureau for the preceding fiscal year, which shall include a detailed statement of appropriations and expenditures.

SEC. 6. That the Librarian of Congress is authorized and directed to establish in the Library of Congress a division to be known as the "Legislative Reference Division" of the Library of Congress, and to employ competent persons therein to gather, classify, and make available in translations, indexes, digests, compilations, and bulletins, and otherwise, data for or bearing upon legislation, to render such data serviceable to Congress and committees and Members thereof and to the Legislative Drafting Bureau, and to provide in his annual estimates for the compensation of such persons, for the acquisition of material required for their work, and for other expenses incidental thereto. (S. 1240, introduced and reported by Senator Owen.)

In this referendum-pamphlet there are no arguments for and against the proposal submitted to vote, for the reason that under the by-laws of the Chamber questions submitted by organizations and considered by the Directors to be of national importance are to be printed with such statement as the proposing organization chooses to make. The statement of the Railway Business Association follows. There are also several exhibits. In the Nation's Business, which will be published November 15, further material on the subject of this referendum will be printed.

REASONS FOR THE ESTABLISHMENT BY CONGRESS OF A BUREAU OR BUREAUS OF LEGISLATIVE REFERENCE AND BILL-DRAFTING.

(*Statement of the Railway Business Association.*)

Information comprehensive in scope, promptly available, conveniently compiled and strictly unbiased—it is to assure this to Senators and Representatives that a legislative reference division of the Library of Congress is advocated.

Trained service in perfecting statutory language clear as to meaning, certain as to effect and free from conflict with existing laws or court decisions—it is to provide this to Senators and Representatives that a legislative drafting bureau is proposed.

Experienced legislators both State and national have until recent years acquiesced reluctantly in a situation which imposed upon them a task impossible for any man to perform satisfactorily unless he possessed adequate instruments and helpers and which provided neither the instruments nor the helpers. Upon each bill of a mass running into the many hundreds or thousands at a single session he was expected to be sufficiently informed so that he could scrutinize and criticise intelligently and vote wisely. This burden was but superimposed upon that of conferring with crowds of office-seekers, agents of special interests and other petitioners for governmental recognition, besides conducting his private business. Still, he was supposed to make time and maintain equanimity for putting purposes desired by his constituents into statutory language which should prove constitutional, economically sound and feasible to administer, and to detect any unfounded statements which might be made to him by special interests expertly represented. Carrying these impediments, many a law-maker has asked himself whether it was not a miracle that legislation was so often enlightened, court-proof, workable, and innocent of "jokers."

The Library of Congress or the State Library contained such books as might drift to it from federal, State and foreign sources, and possibly the librarian would be found half-buried amid a mountain of documents where, with his own hands, he was compiling for some legislator material or manuscript for a speech or a report. Members of Congress could only with the most arduous individual labor ascertain the experience of other countries; State legislators had to explore whole volumes of statutes, reports, books and periodicals in order to know how a proposed experiment has worked elsewhere as reported in print, and to no one was the duty assigned of verifying published statements by direct inquiry of persons in official authority.

In recent years legislators, State and federal, have worked out a marked improvement in the machinery for obtaining data. State libraries have been better catalogued and gaps more systematically filled. Special efficiency has been required of attendants. Carrying this tendency still further, many States have established, sometimes separate from the library and physically close to the legislative halls, a small selected library containing only material pertinent to questions under immediate consideration. The Indiana bureau, credited with conspicuous success, was in 1913 as the result of several years' experience separated from the jurisdiction of the State library and erected into an independent department. Such a bureau does not wait for the routine receipt of documents where the legislators need or may need the information forthwith. From bills not enacted, party platforms, campaign speeches, newspaper articles and letters from legislators-elect in response to a circular inquiry, such a bureau ascertains weeks in advance of the session what are the principal topics which are likely to come up and puts itself in readiness to answer any question on those subjects without a moment's delay to the legislator. Of forthcoming documents advance proofs are sought; on new subjects inadequately treated hitherto discussion is requested by correspondence from professional authorities in all parts of the country or of the world. If the legislature has before it a question which is at the same time before legislatures or courts in other States or foreign countries, intelligence is obtained promptly of any action taken. The experience and literature of the civilized world are drawn upon to make the data complete and the mail, telegraph, and telephone utilized to bring such data up to the minute.

Classification and indexing are by subjects. To that end books, pamphlets, and magazines are broken up. The material handed to the legislator is stripped of everything not bearing on the subject of his inquiry. Still further advance toward convenience of study and ease of mastery is accomplished by typewritten digests. After having segregated from the statute book of each State the text of the Act on the subject in hand, the bureau may concentrate upon some one feature with a one-page statement, giving a list of the states which have such a statute and opposite the name of each a single phrase indicating that State's provision. In the same way discussion as found in the speeches, articles, committee reports or court decisions is condensed for quick inspection. It is a function of the bureau to furnish arguments. This includes not only facts, but political arguments, which may be as important, and legitimately so, as the facts, and the bureau

can preserve its nonpartisanship by volunteering to the inquirer a statement of the arguments which he should be prepared to meet from those opposed to his view.

Material is removed to the main library as dead when the subject with which it deals ceases to be a live issue. The bureau is a laboratory, not a warehouse.

Beginning in Wisconsin in 1901 with a bureau costing but $1,500 a year, such bureaus are now established in 25 States—Alabama, California, Connecticut, Kansas, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, and Wisconsin. Of these, bureaus were established during 1913 in Illinois, New Hampshire, Ohio, and Washington. Besides State bureaus similar institutions are maintained in cities, including St. Louis, Kansas City, Milwaukee, Cincinnati, and Los Angeles. In Kansas and Wisconsin the State University maintains such facilities for all municipalities. The Baltimore bureau serves the Maryland State legislators.

The Library of Congress during recent years, especially since occupying the present building, has been placed on a systematic basis for efficient service to members of Congress as well as to the general public. The institution maintains among the great public libaries of the world a leadership in the origination and development of progressive methods of book collecting, cataloguing, indexing and affording convenient facilities to special students. It is not, however, authorized or equipped to perform the services of specialized compilation and condensation undertaken in advance of the demand and carried out with a view to high speed as well as to accuracy and completeness. Mr. Herbert Putnam, the librarian, has earnestly recommended that the institution be placed by Congress in position to perform such expert service.

Drafting of bills has come to be regarded by legislators as a function upon which they need specialized assistance quite as surely as upon the compiling of data. Law-makers who are not lawyers suffer a serious disadvantage in finding statutory language which will be immune from the danger of attack in the courts, of failure in operation or of criticism by the public. Even men learned in the law and experienced in legislation feel the need of placing on other shoulders the responsibility for clearness, certainty of effect and avoidance of conflict with other laws and with constitutions. In one State the comment has been made that the members of the legislature include men of first caliber, some of them lawyers, possessing the knowledge and the carefulness requisite for drawing a flawless document in private practice; but in politics they deal on the stump with the substance rather than with the form of the reforms which they promise and find themselves after election zealous rather to redeem their pledges by accomplishing general purposes than to burn the midnight oil in the drudgery of comparisons and revisions of text undertaken if at all amid a hundred distractions.

No legislator, moreover, can know without specializing in it what must be known about existing constitutions, court decisions, statutes, and administrative situations if he is to avoid pitfalls. A bill may be filed dealing with the charter of a certain city. It is necessary to ascertain in every respect just how that enactment would work—what provisions it would repeal; what sections must be changed to meet the practical conditions in an actual going municipality whose vital functions must continue without undue interruption. Pains having been taken to perfect the measure in these respects, somebody introduces an amendment making the bill apply to all the cities of the State. By this simple change an entire new set of statutes comes into play and another revision is essential. A bill may contain a word which has not been judicially interpreted, when another word satisfactory for present purposes has been so interpreted; for instance, the legislator writes "restriction of trade" when "restraint of trade," which has been through the crucible of the United States Supreme Court, would do as well. By using in the new law a phrase whose meaning is established millions of dollars may be saved in court costs and in losses through the postponement of business enterprises due to uncertainty in connection with litigation. It is said in Wisconsin, where bill-drafters are maintained, that since the bureau was established only two bills drawn by it have subsequently been pronounced invalid by the courts and in each of those two cases the bureau had stated in writing when transmitting the draft to the legislator who had requested it that in their judgment the measure was unconstitutional.

Definite information is obtained from more than one source as to whether the provision contemplated is being enforced in each State where it is on the statute books and if not the attorney general of that State is requested to tell why the law is not being used. One chief difference between a library and the legislative reference bureau is that the bureau uses as its authorities persons as well as printed matter.

Most of the States which have legislative reference bureaus now have also draftsmen whose services are available to the legislators and to committees. Usually the draftsmen are so located with reference to the legislative halls that they can be called to committee rooms for conference or summoned at a minute's notice to the chamber itself if members discussing a measure require immediate advice upon textual points arising in debate.

Protection can be afforded to the bill-drafter against any possible suspicion of endeavoring to push substantive ideas other than those suggested to him by the legislator, by requiring that no bill shall be drawn by the bureau except from a draft of purposes prepared by and signed by a member of the legislative body.

Legislators have devised the reference and bill-drafting bureaus to meet a long felt want. Members of Congress having knowledge of such facilities in the States now propose that similar equipment be established at Washington. To do this would involve an appropriation. Those in Congress who propose to erect these departments are entitled to be assured that the business men of the country, while urging economy in the government, will look with approval upon a moderate expenditure for the purpose of providing the nation's law-makers with accurate, prompt and well-digested information, and with facilities for the expert revision of bills. Nobody has a higher motive than business men for the encouragement of systematic efforts by our legislators to promote intelligent consideration of proposed measures and enlightened action thereon.

LEGISLATIVE REFERENCE AND BILL-DRAFTING BUREAUS IN THE STATES.

A digest of State laws concerning legislative reference and bill-drafting bureaus is here printed. Indications are added of activities in some States where by law no specific provision is made for legislative reference and bill-drafting services.

Wisconsin: The Wisconsin Free Library Commission is required to maintain at the State capitol a small working library for legislative reference. Of an annual appropriation of $15,000, six thousand dollars may be used for the employment, during sessions of the legislature and for two months preceding sessions, of draftsmen and extra help in drafting bills. (Law of 1903.)

Pennsylvania: The law creates a legislative reference bureau in the State Library, and the position of director, at a salary of $3,500, with tenure during good behavior. With approval of the Governor, the director appoints an assistant who is to be learned in the law. Upon request of the Governor, heads of departments, or a member of the legislature, the bureau must give assistance "by advising as to bills and resolutions and drafting the same into proper form." (Law of 1909.)

New York: In 1890 the State Librarian appointed a legislative reference librarian and arranged to prepare and publish a digest of current legislation in all States. This digest is still prepared. Ten years ago a legislative bill-drafting department was created: The Temporary President of the Senate and the Speaker of the Assembly appoint such competent persons as may be needed, not exceeding three, and fix their compensation. Upon request of either House, any committee, any member of the legislature, or any officer these appointees draft bills, examine and revise proposed bills, and advise concerning constitutionality or other effect.

Ohio: In connection with the State Library there is a department of legislative reference and information, under a legislative reference librarian appointed by the library commissioners and subject to their supervision. "He shall also furnish to members of the general assembly, under their direction, such assistance as they may require in the preparation and formulation of bills." The appropriation is $10,000. (Law of 1910.)

California: There is a legislative counsel bureau under the supervision of a board composed of the Governor, two senators and two assemblymen so designated that the legislative members are not of one political party. At the suggestion of the Governor, a judge, or a member of the legislature, the bureau revises bills. The chief of the bureau is to attend all sessions of the legislature. There is an appropriation of $20,000. (Law of 1913.)

Indiana: For the earlier legislative reference department in the State Library, the legislature in 1913 substituted an independent bureau of legislative and administrative information. In addition to assisting members of legislature in preparing and drafting bills, the bureau is authorized to inform municipal officials in regard to municipal laws and administration. The appropriation is $16,000.

New Hampshire: In 1913 a legislative reference bureau was created to perform the ordinary function of such a bureau and to furnish members of the legislature assistance in preparing bills.

Rhode Island: In the State Library there is a legislative reference bureau, the employees of which are appointed by the State Librarian with the approval of the secretary of state. The law does not mention bill-drafting except in so far as this might be implied in the duty of presenting "such other information as may be useful or necessary to the general assembly in the performance of its legislative functions." The appropriation is $3,250. (Law of 1907.)

Massachusetts: For many years the State Library has been primarily a legislative reference library, and for 18 years there have been facilities for bill-drafting. In 1912 additional rooms were added to the library, in charge of a legislative reference assistant whose position was authorized in 1910.

Connecticut: The State Library maintains a legislative reference department, with an annual appropriation of $5,000. The department maintains a special file of photographic copies of bills and resolutions introduced in the Connecticut legislature.

Nebraska: There is a legislative reference bureau. It charges $5 for drafting a bill, presumably acting for private citizens as well as legislators. In 1913 $8,600 were appropriated for the next two years. (Law of 1911.)

Texas: Under law of 1909 there is a legislative reference department. Its duties include drafting of bills and resolutions. In 1913 the Governor vetoed appropriation of $5,000, but work is still carried on with a limited staff.

Iowa: In the State Librarian's office there is a legislative and general reference assistant at a salary of $1,000. (Law of 1909.)

Virginia: The State Library, without a special law, maintains a legislative reference bureau during sessions of the legislature.

North Dakota: The State Library Commission is directed to establish a legislative reference bureau. The librarian of the State Library Commission is required to assist in the preparation of bills. (Law of 1907.)

Illinois: A law of 1913 creates a joint legislative reference bureau, in offices at the State capitol, and with a secretary whose salary is $5,000. On Monday of each week the bureau must furnish to each member of the legislature an indexed digest of bills, resolutions, memorials, amendments, etc., introduced in the legislature. It must also assist any member in the preparation of bills. As an added duty, the bureau must prepare and publish a detailed budget of appropriations asked by State departments for the biennium for which appropriations are made.

South Dakota: In the State Library there is a division of legislative reference, and the State librarian is directed to assist, as required, in drafting bills. (Law of 1907.)

Montana: In the Historical and Miscellaneous Department of the State Library there is a legislative reference bureau, in charge of an assistant whose salary is $1,200. The bureau is to assist members of the legislature in drafting bills. (Law of 1909.)

Kansas: In the State Library there is a legislative reference department, for which there is no general law. Since 1909 appropriations have been made annually, however, for this department.

Washington: By a law of 1913 the attorney general of the State is directed to aid members of the legislature in preparing and revising bills, and the director of the Municipal and Legislative Reference Bureau of the State University is invited to remain at the State capitol during sessions of the legislature in order to assist members in legislative research.

Michigan: In the State Library there is a legislative reference and information department. For this department the State librarian appoints a chief at a salary of $1,800 and an assistant at $1,000. The department gives such assistance as members of the legislature may require in preparing bills, and is required to draft bills upon such subjects as members may desire. (Law of 1907.)

Oregon: The State Library, without express provision of law, carries on legislative reference work.

Alabama: The Department of Archives and History is required to do legislative reference work. (Law of 1907.)

Vermont: There is a legislative reference bureau, the librarian of which is to co-operate with two men of legal training and legislative experience, appointed as "revisors of bills." These revisors are to begin work at least 30 days before the legislature meets and continue during sessions. After the election of legislators blanks are sent for preparation of bills to members-elect. At request the revisors will draft bills. Before introduction, all bills and resolutions must be examined and endorsed by the revisors. The appropriation is $5,000, and revisors receive $7.50 a day and expenses. (Laws of 1910 and 1912.)

Maryland: The Municipal Reference Bureau of the City of Baltimore assists legislators. There is no State law and no State appropriation.

ANALOGIES IN OTHER COUNTRIES

ENGLAND

It appears that Pitt appointed an official who devoted his attention to the form in which bills, intended for introduction by the ministry, were drafted. In 1869 the position of Parliamentary Counsel was established and a staff of assistants provided. This organization continues today. The following description of the activities of the Parliamentary Counsel is taken from Sir Courtney Ilbert's book on Legislative Methods and Forms, published in 1901. Sir Courtney Ilbert was formerly Parliamentary Counsel.

"Some time in the month of November the parliamentary clerk to the treasury usually sends round a circular to the other departments, requesting them to inform the treasury what departmental bills are likely to be required. All formal instructions for Government bills are sent by the treasury to the parliamentary counsel, who is thus placed in the position of being draftsman to the Government and not to any particular department. * * *

"The procedure adopted on receipt of the instructions will vary according to the character and importance of the measure. There will usually be a preliminary conference either with the Minister who is to take charge of the bill, or with the permanent head of his department, or with both. In the case of minor departmental measures, the instructions first received may suffice for the immediate preparation of a draft much in the form in which it will be submitted to parliament as a bill. In the case of more important and elaborate measures, the stage of gestation is naturally longer. It is often necessary to prepare memoranda stating the existing law, tracing the history of previous legislative enactments or proposals, or raising the preliminary questions of principle which have to be settled. The first draft may take the form of a rough 'sketch' or of 'heads of a bill.' The original draft, whether in the form of a bill or otherwise, is gradually elaborated after repeated conferences with the Minister, and with those whom he takes into his confidence. * * *

"When the draft of a bill has been finally or approximately settled, it is usually circulated to all the members of the cabinet for their information before introduction into parliament, and the parliamentary counsel supplies the executive department concerned with a sufficient number of copies for this circulation. * * *

"Of course, however, the labors of the draftsman do not end at this stage. The publication of a bill brings suggestions for amendment, which may be forwarded by the minister or department for consideration. After the second reading these suggestions take the form of amendments on the notice paper, which will have to be daily scrutinized. In anticipation of the committee stage, the draftsman will often find it prudent to prepare, for the purpose of refreshing his own memory, and for the use of the minister in charge, notes on the several clauses, explaining the origin and object of the proposals which they embody, referring to the precedents on which reliance can be placed and noting the arguments which may be used or which may have to be met. As the committee stage approaches, and when it has been reached, the amendments will be the subject of discussion with the minister, and alterations or consequential amendments will have to be framed. If the bill goes to a committee of the whole house or to one of the grand committees, the draftsman may, perhaps, be expected to attend the debate and to give such assistance as he can in the way of framing or modifying amendments or meeting points.

"Where a bill is much amended in committee, it will require minute examination after the committee stage, for the purpose of seeing whether there are any errors to be corrected, inconsistencies to be removed, or consequential alterations to be made; and amendments will have to be framed for insertion at a later stage. Notes will also have to be written on various points; and the literature which thus gathers round a bill often attains to formidable dimensions. When a bill of great importance is in progress, it requires the constant and unremitting attention of the parliamentary counsel, to the exclusion of all other work * * *"

As a critical comment upon the results obtained by the Parliamentary Counsel's office the following excerpts are printed from "The Government of England" by A. Lawrence Lowell, Volume 1, pages 356-358, published in 1908:

"A public bill introduced by a private member may be drafted by him, or by counsel he has employed for the purpose. There is no systematic supervision over such bills, no stage at which their drafting is reviewed, and whether well or ill drawn, they are not likely to be much improved in their passage through Parliament. Government bills, on the other hand, which relate to England, and are not of a purely formal and routine character, are now all drafted by the Parliamentary Counsel to the Treasury, or by his assistants under his direction. They are prepared under instructions from, and after consultations with, the de-

partments concerned, and are sometimes recast several times before they are introduced into Parliament. They are then assailed by a host of critics, both in and out of the Houses. * * * Amendments and new clauses are adopted during the debates in committee. These changes are usually made with the consent of the minister in charge of the bill, and the Parliamentary Counsel, as well as the permanent head of the department concerned, is often present under the gallery to give his advice; but still the amendments mar the fair handicraft of the draftsman, and an effort has to be made to improve the text either on the report stage or in the House of Lords. * * *

"The Parliamentary Counsel's office has certainly improved the statutes very much by making them more concise, uniform and orderly; but their form is far from perfect. * * * To a layman, and even to a foreign lawyer, an English act is often difficult to understand, and sometimes misleading. * * * It does not seem necessary that English acts should be quite so obscure as they often are. Nor, judging from the amount of litigation that sometimes occurs over their interpretation, does this defect appear to be always counterbalanced by remarkable legal certainty. The most celebrated case is that of the Education Act of 1902. * * * The majority of the Court of Appeal was of opinion that the statute did not oblige (the West Riding of Yorkshire to make certain payments). The House of Lords reversed the decision; but for Parliament to pass the Act in such a form that the Court of Appeal could regard it as failing to effect what everybody knew to be one of its main objects is surely an amazing example of bad drafting. Nor was this the result of amendments in the House of Commons, for the provision in question went through unchanged; and although in this case the fault is said not to lie at the door of the Parliamentary Counsel, it shows none the less the defects of the system."

DOMINIONS OF BRITISH EMPIRE

The constitutions of the self-governing dominions of the British Empire contain provisions that the procedure of legislation is, in the absence of specific direction otherwise, to accord with parliamentary procedure in England. It follows that many of the self-governing dominions have officials who correspond in their functions to the Parliamentary Counsel of England.

CANADA

For each house of the Canadian Parliament there is a law clerk whose duties include those of parliamentary counsel as well as those of legislative draftsman. The law clerk of the senate is appointed by the senate. The law clerk of the lower house, in which the great majority of measures are introduced, is also law clerk of the Government. He is appointed by the Speaker and has an assistant.

INDIA

In 1869 a legislative department was established under the Law Member of the Governor-General's Council. This department drafts all government measures which are to be introduced. Ex-officio, the Law Member is a member of the committees to which bills are referred. To accompany each bill the legislative department prepares a statement of "objects and reasons." In Bengal the local legislature has an official draftsman of its own.

AUSTRALIA

In Australia, Victoria, New South Wales, and Western Australia have parliamentary draftsmen. In Victoria, the parliamentary draftsman serves under the direction of the ministers, being an officer of the public service appointed by the governor in council and attached to the department of the attorney general to whom he is directly responsible. He is required to prepare all government bills and draft amendments. When desired, he also drafts bills for private members and, as a rule, all bills of private members, by whomever drafted, are examined by him.

In New South Wales, there are two parliamentary draftsmen; their duties are similar to the duties of the draftsman in Victoria.

FRANCE

"In France the method of legislation stands half way between the American and the English methods. The ministry studies a subject, prepares a bill dealing with it, and launches the bill into the Chamber.

There, the bill passes into the hands of a committee which amends and, perhaps, quite remolds it, then returning it to the Chamber with an elaborate report." [Bryce, "Conditions and Methods of Legislation" (1913), page 94].

GERMANY

"The German Empire makes great use of expert commissions, such as that which elaborated its great civil code, and it has very competent lawyers upon or attached to its official staff. * * * The text of bills of such magnitude as the bill for consolidating insurance laws * * * is generally published a long time,—sometimes several years,—before the (legislative) discussion begins, so as to give the government an opportunity to introduce such modifications as may seem appropriate after full consideration of the results of public discussion." [Ilbert, "Methods of Legislation" (1912), page 30].

Excerpts
from
DEBATE IN UNITED STATES SENATE

July 11, 1913.

Mr. Owen. (The chief draftsman) "will act only in an advisory capacity. It is of the highest importance to both the Senate and the House that we should have a legislative reference bureau here, such as has been found so essential and necessary in other parliamentary bodies * * *."

Mr. Root. "* * * The fundamental idea ofthe bill is to give the benefit of a trained, experienced student in the preparation of bills; not to take a bill after it has been passed upon, but to perform the function which is now performed to great advantage by the officers who are called counsel in the British House of Commons. The idea is to have a more or less permanent officer who is familiar with existing legislation and with the decisions of the courts, who can take a measure that has been drafted with the slender opportunity for examination and research which we have here and see how it fits into the existing laws of the country and what its effect will be under the existing decisions of the courts and suggest better, clearer, more unambiguous, and more effective forms of expression.

"This officer would be available for the committees of Congress. We frequently find a committee taking a measure with which it agrees in principle, but which is unsatisfactory in form, and trying to thrash it into shape under great difficulties and without very much satisfaction. Under this bill the committee would be able to send such a measure to this officer to be put into shape in accordance with the instructions of the committee. If any Member of the Senate or of the House wishes to have a bill drafted to accomplish a particular purpose, and no committee is willing to send it to this officer, by having a request made by a specified number of Senators or Members of the House he can secure the rendering of this service.

"I think that this is one of the most important and will be found to be one of the most beneficial steps in advance in the reform of American methods of legislation. A verp large part of the litigation and the miscarriages of intention on the part of the lawmakers of the country and the failure of our people to get by legislation the relief which they wish to have and which their representatives in Congress wish to give them comes from the fact that laws are carelessly drawn; that laws are drawn without a sufficient study or a sufficient understanding of what is going to be the resultant of putting them into the same system with existing laws under existing decisions.

"We need trained and intelligent assistance in the drafting of laws. I am sure that the same experience which in a number of our States, notably in Wisconsin and a number of other States, has worked out to a satisfactory conclusion along this line will be duplicated in our national legislation. I feel very strongly that this is a practical measure of reform in legislation. * * *

"If the President wants to recommend a measure to Congress, he will have a right to call upon this officer to make a draft in accordance with his recommendation. A committee which agrees with the principle of a bill that is proposed will have a right to call upon him to make a draft to give effect to that principle. Nobody has to do anything with it after it is done, and nothing can be done with a bill that is introduced by any one unless it is upon his own request."

Mr. Bristow. "Of course, if that is the purpose of the bill I can see that it would be very useful; but I got the impression that 'a bill' might be any bill pending."

Mr. Root. "No. The work that is done has no legal or binding effect whatever. It is merely an assistance of which the committees and other public officers may avail themselves."

Mr. Bacon. "* * * With all due deference and the profoundest respect for the author of this bill, and for the distinguished Senator from New York (Mr. Root) who has so highly commended it, I wish to say that I think it is the most astonishing piece of legislation I have ever heard proposed in this body. * * *

"I may overestimate myself, but I am very free and very frank to say that I do not myself need any such assistance. Not only do I not need any such assistance, but I should not be willing to subject myself to any such supervision, to use the mildest term. The idea, that Members of the Congress of the United States, chosen men, who are presumed, at least, whether that presumption is realized or not, to be educated men, men skilled in public affairs, men with knowledge of the existing laws and of conditions of affairs calling for the enactment of new laws, need somebody to supervise them and to put in shape measures which they favor and which they profess to advocate! Why, I can scarcely find words to express my astonishment that such a thing should be proposed in this body.

"Now, it may be that such a method of procedure is found convenient in the British House of Commons, but the Senators who cite the British House of Commons in this particular, as in a good many others at other times, fail to recognize the essential and fundamental differences between the House of Commons and either branch of our Congress. * * * As a general rule the ministry in England is taken from the House of Commons, and that ministry is but a committee of the House of Commons, so far as it is composed of the members of the House of Commons. It is the executive branch practically, though not nominally, of the British Government; and such being the case, being absolutely responsible to the House of Commons, and without the support of the House of Commons not being able to exist or to continue in power, it is perfectly natural that the great body of the House of Commons takes little or no active part in the framing of legislation. * * *

"That is not the case here. Every Senator here is the equal of every other Senator, and every Senator here is in a position to propose legislation. Every Senator here is in a position to attempt to mold legislation, and no one here, whether he be on the majority side or on the minority side, is clothed with the power to suggest legislation and to frame legislation with the expectation and understanding that it is to be recognized as a measure to be supported in whole by those who favor the dominant party in the legislative body.

"Language used by men is necessarily an imperfect vehicle. Necessarily there is frequently ambiguity. Necessarily the opinions of men will differ on the construction of language."

Mr. CHAMBERLAIN. "* * * If I recall correctly there have been words used in the Sherman antitrust law and in other important pieces of legislation which not only the Senate generally did not understand when the bill was enacted into law but which the Supreme Court itself did not understand. So I say, if the Senator will pardon me a moment, if such an officer as this were provided by law to go over and study the use of words and to report to the Senators or Members having bills in charge very much of this misunderstanding might be done away with in the future."

Mr. BACON. "I think the Senator will wake up and find himself entirely mistaken in that anticipation. The contrary has been true from the beginning of the world. It is true of all statutes which have been enacted into law particularly, and vast libraries full of the decisions of courts construing statutes about which men have differed are the best testimony to the truth of what I now say. Even the members of the courts themselves differ as to what language means in a particular case. As suggested to me by my friend from Arizona (Mr. Smith), the greatest of lawyers have with the utmost care drawn wills about the construction of which there has been vast litigation, great consideration by courts, and frequently an absolute overturning of what was the purpose of the lawyer in drawing the will, and I presume there is no lawyer who might not have a similar experience.

"But who could hope that this schoolmaster, whom we propose to provide an office for at the rate of $7,500 a year, could possibly rise to such a height of perfection in the use of human language that he could bring here compositions about the construction of which there would be no difficulty and no doubt."

Mr. OWEN. "I hope to be permitted to suggest to the Senator from Georgia that, if he had read the bill more carefully, perhaps he would not have spoken of this drafting bureau as exercising a supervision over the Senate and being a schoolmaster over the Senate. It is only to be used by those who are not entirely confident of their ability to draft a complicated act in such a way as to comport with every statute that is on the statute book and with every decision that has been reported with regard to it. There are some of us in this body who are not so absolutely sure of themselves in drafting important measures. I took part in reporting this bill, and I want to call the Senator's attention to the fact that he obviously misunderstands the scope and purpose of it."

Mr. BACON. "Of course I do not assume to myself all the knowledge the Senator from Oklahoma suggests this proposed congressional schoolmaster is to have. I do not think within the range between the two oceans he is going to find a man who knows all the laws which have been passed and all the decisions which have been made and who will be prepared when a bill is submitted to him to say whether or not it will in any manner trench upon any other act which has been passed or is consistent with any provision of a statute passed, or whether it is consistent with every decision of the courts which has been made. Those are things which we develop in our discussions here. In our discussions we find out when a bill has been introduced whether it is a proper bill. * * * It is in the debates of this body, in the suggestions of ninety-odd Senators, each bringing his modicum of knowledge to the general fund, and by a comparison and examination that we ascertain whether legislation is proper to be enacted or not.

* * * * * * * * * * * * * * * * * *

"If such a man (a man competent to fill the position proposed by the bill) could be found and if, in addition to his great wisdom, his great learning, you could engraft upon him absolute sincerity of purpose and patriotism, he would be a man who should be installed as the lawmaker of this country, and let the gentlemen who are so deficient in the ordinary rudiments of the English language and who are so ignorant of law,

that which exists and is found in the statute books and as well in the decisions of the courts, go home, and let this schoolmaster and this all-wise man perform our functions for us.

* * * * * * * * * * * * * * * * * *

"Does this bill prohibit a Senator from introducing a bill in the Senate? Will this bill, if enacted into law, change the rule in that regard? There is no doubt about the fact that every Senator now has the right to frame and introduce a bill without reference to this wise man. * * *

"Why, a Senator could not even get up here and say, 'I propose at the proper time to offer an amendment' unless he would be subject to the inquiry from the Chair or from a Senator, 'Has that amendment been submitted to this congressional schoolmaster? Has he drafted and approved it?' * * *

"I am not, however, going to detain the Senate, but I do want to make this point distinctly—for it is a good point, and possibly Senators may feel the necessity, if they wish to pursue this matter, to begin over again—I say this bill proposes a change in the rules. It contains a positive requirement that every public bill and every amendment to a public bill, to go no further—I am speaking of the provision which refers to the President and the committees of the two Houses— that every public bill and every amendment to a public bill shall be drafted by this all-wise man. * * *

"It is true that it is proposed to do this by an act of Congress; but, nevertheless, it would be a change of the rules. We do not have the rules of the Senate controlled by acts of Congress, and I understand that the province of the Senate is to frame its own rules. * * *"

Mr. Owen. "I have been very much amazed at the criticisms made by the Senator from Georgia (Mr. Bacon.) The misinterpretations of the bill by the Senator from Georgia are the more surprising because this matter has been before Congress not only during this session of Congress but in the previous Congress. * * *

"The bill does not propose in any way to interfere with the right of a Senator to draft a bill and to introduce it, but the only purpose is to authorize and direct the proposed drafting bureau, in charge of a trained student of legislative language and processes, to draft a bill when called on to do so by any of the authorities of the United States. * * *"

(Congressional Record, 63d Congress, 1st Session, pages 2686 ff.)

Excerpts
from
COMMITTEE HEARINGS

Senate Committee on the Library.

February 4, 1913.

Senator LaFollette. "There is quite a large number of States which have been interested in the subject. * * * I do not think that any State that has made a beginning in this direction has thrown it over. * * *

(The Nelson bill, introduced January 25, 1912, was sent by its author) "to a number of gentlemen for their opinion, and I will read briefly from a few of those who responded. Regarding this bill, Gov. Woodrow Wilson said:

> 'I want to assure you that I entirely approve of such legislation as is proposed by bill H. R. 31356. * * * I can only say that it seems to me highly important that a legislative reference department should be established in the Congressional Library. The experience of several of our States in this matter is conclusive as to the great usefulness of such a department. Indeed, I think if once established, every one who had any knowledge of it would deem it indispensable.'

"President A. Lawrence Lowell, of Harvard University, said:

> 'The plan of your bill for a Legislative Division in the Congressional Library seems to me an excellent one, for a great many mistakes may be saved and many useful hints obtained by knowing what has been done under similar conditions elsewhere, and at present there is a vast deal of such information of which we are really wholly ignorant. It is not enough to collect it; it must be put in such form that one can use it without enormous labor. The legislative bureau in Wisconsin seems to me to have done excellent work in this direction.'

"President Charles R. Van Hise, of the University of Wisconsin, said:

> 'I am very glad, however, to give my unqualified indorsement to the plan. All who know the situation in Wisconsin before we had a legislative reference library and since that time appreciate the superiority of the present condition. While the ideas of the members are strictly carried out, the bills are framed in such form that they are not likely to be overturned by the courts because of lack of consideration of other laws and of decisions. * * *
>
> 'I have no doubt that once Congress establishes the bureau proposed the Members will find it of immeasurable assistance to them in getting their bills into satisfactory form.'

"Mr. Robert H. Whitten, librarian-statistician, public-service commission, New York City, said:

> 'I find that it will be impossible for me to appear at the hearings. I am, however, strongly in favor of the passage of a measure of this kind. I believe that such a bureau would be a great aid to securing of more efficient and well-considered legislation.'

"In my own State—if I may refer to it again, just on this point before leaving it—we were breaking new ground in many directions. We were in danger of enacting legislation which would be overturned by the courts. If we had gone ahead blindly and rashly we should have made a sad mess of it. We never have had but one of all of the laws that were a part of the great body of our progressive legislation set aside by the Supreme Court as unconstitutional. * * *"

House Committee on the Library.

February 26 and 27, 1912.

The Right Hon. James Bryce, British Ambassador. "Let me attempt to sum up briefly the advantages which we in Britain believe to have resulted to the conduct of legislation and the improvement of our statute law from the institution of the office of parliamentary counsel. They are as follows:

"In the first place, it has secured much greater economy, because, until this one office was created for the purpose of doing the work of drafting, we had been obliged to pay much larger sums to the lawyers than those which are now required for the payment of the permanent officials.

"Secondly, a harmony in legislation has been secured which did not previously exist. * * *

"Thirdly, the legal form in which bills pass into acts is a great deal better than it used to be under the old system. Since 1870 the form of our statutes has been far superior to what it was in earlier years, and especially to what it was before 1850. The acts of Parliament are shorter, they are clearer, they are better expressed, and less litigation arises upon them. * * *

"Fourthly, the office of parliamentary counsel has been found very useful in the work of consolidating statutes. We have been engaged in England for a good many years in clearing off the statute books obsolete or practically superseded statutes which have not been expressly repealed, and in publishing revised editions of the statutes. We have also been employed in consolidating a large number of statutes which deal with the same subject, and the superabundance of which, as well as the occasional discrepancies between the provisions of which, had given trouble in practice. * * *

"Fifthly, sometimes the cabinet and sometimes a department found it necessary either in considering changes in the law which they desired to effect by legislation, or for the purpose of controlling the work of the administration by their subordinate officials, to have prepared for them a succinct and clear statement of the laws affecting a certain branch of administration. * * *

"Sixthly, the ministers sitting in Parliament often find themselves obliged to form an opinion upon bills introduced by private members, and though they could sometimes do so from their own knowledge and sometimes could obtain information from their own subordinates, it was often convenient to consult the parliamentary counsel regarding some pending bill and have his opinion as to how far it was compatible with the existing law or whether the changes that it proposed to introduce would destroy the symmetry and harmony of the law. * * *

"If I may, I will venture to say a word or two on two other topics besides the parliamentary counsel's office because I understand both are included in the scope of this bill now before the committee. The one is as to the bureau of legislation which is proposed in the bill. If I may be presumed to offer an opinion, I would say that this appears to me a proposal of the highest value. The age in which we live, gentlemen, is an age in which more and more is demanded of legislation. The people of this country and the people of every free country are expecting much more from legislation than they did formerly. * * * It appears, therefore, to be more than ever necessary to endeavor to accumulate all data that can possibly help us in the framing of good legislation. The most important and obviously necessary of those data are such as are furnished by the experience of the country itself. It is necessary to know what are the evils that exist, to consider and weigh different remedies that are proposed for those evils, and to consider how far legislation can deal with them.

"You have here an unequaled opportunity of doing that, because you have 48 States besides the District of Columbia, and you have 49 legislative bodies at work annually turning out many thousands of statutes. You have, therefore, a far larger amount of material for considering the operation of legislative proposals than we have in any European country, but at the same time the value of foreign experience is also very great. These problems which engage our attention and which engage your attention are problems which have come up in European countries also and in the self-governing colonies of Great Britain in various parts of the world. The legislation that is passed in Canada, Australia, and New Zealand deals with problems very much the same as yours, and the same is true of the legislation passed in Germany, France, and other countries throughout continental Europe. A bureau, which could collect all the information from your own States and from the other English-speaking countries of the world and from the great countries of continental Europe, could not fail to be of great value to all those who desire to introduce legislative measures here. One can hardly overestimate the value of knowing not only what has been done in other countries, but also of knowing how the experiments other countries have tried are working out. * * *"

Mr. Frederick A. Cleveland, Chairman of the President's Commission on Economy and Efficiency. "Mr. Chairman and gentlemen of the committee, in order that I may speak directly to the point and not lose time, I will answer the questions which have been handed to me by Mr. Nelson.

"Q. What, in your opinion, would a legislative bureau add?—A. It seems evident to us all, I think, after listening to the remarks of Ambassador Bryce, that it would add two elements or services that are not at the present time adequately provided for. In the first place, it would add a scientific agency for the purpose of accumulating the data necessary to the consideration of policies which are to be incorporated in legislation; in the second place, it would add a professional agency competent to advise and counsel legislators.

"Q. How would it relate to your work?—A. The work of the President's commission has to do with subjects of administration. As I understand, the work of Congress has to do with the determination of policies and the enactment of policies into law, while the administration under the President has to do with the execution of policies which have been determined by Congress. In both of these fields there are very large technical problems. * * *

"Q. In your opinion, should this department be nonpartisan in every way, or are questions of legislation in your opinion such as are necessarily partisan in character?—A. Whatever be the partisan charac-

ter of a measure in its initial stages, whatever the partisan organization which accepts responsibility for promotion, whatever the partisan agency which avails itself of the opportunity to advocate a measure which is based on a much-felt social want, whatever the motive that demands enactment into law, it is evident that the considerations which should come before Congress, as a whole, should be based on general welfare, and general welfare is nonpartisan. * * *

"Q. You have employed experts in your work for some time past; would it be difficult to get experts in this work?—A. This question, perhaps, might be considered in relation to the next:—'What do you think real experts could be secured for who would know something about this business?' There is no doubt about the difficulty of getting the right kind of a man for doing the kind of work which has been described, but I think that the conclusion can be just as certainly reached that whatever the cost to the Government, Congress could not err in obtaining the right kind of man at whatever cost. * * * In a country so large as this, and with so many varied interests, it is very evident that no man can render an off-hand opinion about any question of public policy or reach scientific conclusions concerning the facts involved in any piece of legislation; nor can one within a few days, or for that matter in many instances within a few months, accumulate the data necessary to lay the foundation for intelligent legislative action. * * *"

* *

Dr. Charles McCarthy, Wisconsin Legislative Reference Department. "I am not an expert in this work, and I do not believe there are any such experts. I have been, however, for 11 years, drafting bills for my State as chief of the legislative reference department. Now, in that time I have tried to assist the State legislature, and I have drafted a great many bills for Congress, and so have some little experience in these matters.

"I have studied in foreign countries, actually at first hand, the work Mr. Bryce has told you about this morning. I have seen the workings of these bureaus and compared them with ours. In our State we have a small appropriation of some $20,000, which is very meager and affords comparatively poor resources for this work, but I want to say at this time that you gentlemen will find a pretty general appreciation of the work by members of the Wisconsin Legislature and those who are now your associates here in Congress.

"It simply comes to this: Mr. Bryce was telling this morning about the English draftsmen. Now, they are men of very high standing and very highly paid. They are not merely lawyers, but do a great deal of gathering of material of all sorts in working up their bills. * * *

"I shall try to give some illustrations of the method of doing business. The legislature in the State of Wisconsin wished to have railroad-commission and public-utility bills. The first thing they thought of doing in the public-utility matter was to get the gas-commission act of Massachusetts, but after a meeting they determined that was not the thing to do. Some of the members of the legislature met me and asked me to get information upon the subject of public-utility control to show how this works elsewhere. I enlisted the State Department at Washington and similar departments all over the world. I got a certain professor of languages at the University of Wisconsin to make translations for me of different documents bearing upon the subject. The result of that was, in the end, after going over this for six or seven months, we were prepared by the coming of the session of the legislature. There was, for instance, a little collection to show how depreciation funds were kept in different countries; how sliding-scale schemes were worked out; administrative devices were used, etc. Finally these members of the committee agreed upon the system used by the Sheffield Gas Co., in England, and said that was the thing fit for Wisconsin conditions, and for me to get my draftsmen to make some rough drafts. After laying down the principles, these rough drafts were submitted to the committee. The committee took them, criticized them, and told me to do them over again. That was done over twenty-two times in the case of one bill, involving three or four months' hard work. * * *

"All of the material in the library must be made available. It can not be left in a Spanish book, a German book, or any other foreign language. It must be collated, so that when a committee comes into the room the members can take up the data wanted at first hand. * * *

"We have not a German Government, depending upon bureaus; we have an American Government, dependent on legislators. Often there is no department dealing with new subjects before the legislature. * * *

"My experience in Wisconsin has been that the professional spirit of trained workers makes them eager to get the facts without bias. No doubt there will be accusations of bias; but I am not afraid of that, because I have an abiding confidence in the fairness of the average man. I do not remember that in all of the 11 years in Wisconsin any such accusation was ever made against my workers. * * *"

* *

Hon. JAMES R. MANN, Member of Congress from Illinois. "We are groping somewhat in the dark on these propositions. I listened with considerable interest to the statement of Ambassador Bryce, but I beg to suggest that in the consideration of this proposition it should be kept in mind all the time that the situation as to legislation in this country is entirely different from that as to legislation in those countries which have a responsible ministry. Here the executive does not prepare bills for consideration, as a general rule, and our Senate has gone so far as to indicate a desire that the heads of the departments should not be permitted to send to committees of the Senate the draft of bills which they desire to have considered. * * *

"However, it is perfectly patent, I think, to any one who has much experience in any legislative body in this country, that the great lack that we have is scientific procedure in legislation. * * * It would be very desirable, in my opinion, to have some one connected with the House in some way who will examine bills. At least it must be the constant experience of all Members of the House who endeavor to prepare bills themselves, oftentimes without much experience in the preparation of bills, that they do not feel qualified to follow regular forms in regard to legislation, and it is perfectly apparent to any one, I think, that where you enact a number of legislative acts somewhat along the same lines it is desirable to use the same form, because that requires less difficulty of construction of the act itself. Certain forms come to be accepted as having certain meaning, and it is desirable in that direction. * * *

"I doubt the desirability of having the body that is proposed gather information from the four quarters of the earth as to the legislative experience of other peoples and other legislatures concerning every proposition that may come up. We have now in the Bureau of Labor a bureau that attempts to collect all available information concerning legislation which affects labor. We have other bureaus of the Government which attempt to do the same things along special lines. But I think there can be no question that it is desirable to have somebody connected with the legislating functions of the Government, either directly under the control of the House or the Senate or indirectly responsive to the will of those bodies or their committees, who will remain permanently, who will acquire knowledge in reference to the form of drafting bills, who will be qualified to go over bills after they have been passively or tentatively agreed to by committees for the purpose of correcting errors, pointing out difficulties, and in various other ways assisting the committees. * * *

"Propositions come before Congress from every quarter, but the committees, in the first instance, must necessarily put that legislation in such form as they desire to have it presented to the House or the Senate. * * *

"If we had some one either under the provisions of the pending bill or in some other way to whom committees could go for guidance or aid, it would be of great assistance. But, bear this in mind, gentlemen: We are the legislative bodies; we are responsible for our legislation. With a membership that has been constantly enlarged for many years, the tendency in our own legislative body as now constituted is to shift responsibility, is to escape the burdens of legislation, is to let some one else do the legislative work. I would not want to see any movement which would make committees feel less responsibility for the work that they do, so that a committee would be able to say 'This is recommended by the parliamentary adviser or the congressional adviser, and therefore it should be accepted.' All that the adviser can do is to advise as to form and effect. * * *"

* * * * * * * * * * * * * * * * * *

Hon. CHAMP CLARK, Speaker of the House of Representatives. "I am in favor of the principle of this bill, because we need experts to draw bills, and then it would be a labor-saving contrivance. Hunting up facts and verifying bills and collating data is simply a work of drudgery. It may involve a good deal of intelligence, but, nevertheless, that is exactly what it is. * * *

"As to the matter of this bureau, I agree with Brother Mann * * *, that there ought to be one for the House and one for the Senate, if you are going to have one. I do not want to mix up with the Senate in such matters. My own judgment about it is that the manager of the bureau ought to be appointed by the House or the Speaker—I do not care anything about appointing him myself. He ought to be responsible to the House. It is the business of the House. I would not think for a minute of allowing the President or the Chief Justice to appoint him. That would be out of the question and surely he ought to be appointed by either the House or the Librarian of Congress.

"I have had 19 years' experience in legislative bodies,—17 in the House and 2 in the Missouri Legislature. The power of accurate definition is one of the severest tests of a well-trained mind. There is no question about that in the world. Take a man who has an idea of a law on a certain subject, but without the power of accurate definition, and he will draw it up in such a loose way that any lawyer of ordinary intelli-

gence can pick it to pieces in court. There is no sense in passing that sort of law. Six or eight years ago there was one committee in the House which had a great many bills, which drew them in a very slovenly manner, and I fell afoul of one of them one day and made 25 verbal changes in that one bill. Everybody agreed to the amendments as soon as I would suggest them for the purpose of clearing up the obscurities of the language. Some people's minds are muddled, any way. I got started on that committee on that bill, and for three or four months I made it my habit just simply to pick their bills when they come in and go after them about these obscurities.

"A bureau of this sort properly conducted would be of very great value to Members of the House. They should do what a lawyer does,—make up the briefs; and the division of labor has come to be one of the greatest features of our civilization. * * * My judgment about it is that the men in this bureau, if established, would soon get to be experts in the drawing of bills and in the collating of the precedents about the bills and so on, and relieve the members of the House of a vast amount of work. For those reasons I am in favor of some kind of a bureau of this description. * * *"

* * * * * * * * * * * * * * * * * *

Hon. SWAGAR SHERLEY, Member of Congress from Kentucky. "Perhaps it is needless to say to this committee that all of us having had any experience in legislative work realize the need for some agency of some sort to help Congress in its now multifarious duties. It was my lot, along with other members on the joint committee of the House and the Senate to codify all of the penal laws of the United States and to also codify what is known as the judicial title. No man could have gone through that work without being impressed with the absence of any scientific method in the wording of statutes; with the frequent repetition of matters; with statutes enacted in direct conflict with existing earlier statutes, and yet without any desire or knowledge on the part of the makers of the later statute of having repealed or modified the previous one. I was so much impressed with that situation that I introduced a resolution in the House some years ago and reintroduced it at this session, authorizing the Speaker to appoint a clerk that should correspond to substantive law as the parliamentary clerk does to the parliamentary law. Now, it seems to me from what little of the discussion I have heard today, that there are ideas embodied in these various bills that present somewhat different considerations.

"One is the idea of such a clerk who shall aid Congress in the formation of the language of statutes,—who shall be an expert on form. The other is a reference bureau that shall gather together for the use of Congress and its membership information on various subjects that are to be legislated on. While those two objects merge, they yet represent somewhat different matters that should be treated somewhat in a different way. As to the reference bureau, there should be no great difficulty. You simply want here a corps of men sufficiently trained to give to Congress, or to a proper number of Members on request, data touching any particular question. In a sense the Library of Congress is supposed to supply that thing now. Practically it does not supply it at all. * * *"

* *

Mr. JAMES MCKIRDY, Assistant Director, Legislative Reference Bureau of Pennsylvania. "Our bureau is about 2 years old. We started in a little before the last session of our legislature in Pennsylvania. Nobody knew anything about it. We tried to follow the lines that Mr. McCarthy had laid out for us, and the result, in a few words, was that we had an unqualified success. Out of 257 men in our legislature I doubt if there were more than 11 that did not at different times make use of our bureau—not alone for the purpose of getting information, but also and mainly for the purpose of having us draft bills, resolutions, and amendments for them. I feel sure, so far as Pennsylvania is concerned,—I can not speak for anything outside of that,—I feel sure that so far as Pennsylvania is concerned the future of our bureau lies along the line of bill drafting. * * *"

Mr. GARDNER, (Member of Congress from Massachusetts, Member of the Committee). "It is my observation, in regard to Congress, that a Member becomes a specialist in the work of his committees more than any general bill drafter or investigator could be. I used the illustration of the Committee on Immigration yesterday. I have noticed that we always have had on that committee some member who was a good deal more familiar with legislation on the subject of immigration than many of the immigration officials themselves. We always have some member who knows the court decisions as well as the laws and regulations. I am rather of the opinion that you will always find among us,—unless you install a legislation plant,—that you will always find among us committeemen much more expert in their particular lines than any general drafting board could be. * * *

"I am making the comparison between a board of general experts,—that is, of men who believe themselves experts on all sorts of legislation,—on the one hand and on the other hand with a less generally expert Congressman who is exceedingly familiar with immigration legislation and with the decisions of the courts on

that class of questions. I think, for instance, that if you take a pretty expert man from your force and let him draft a bill affecting the admission of aliens into the United States, he would make a number of mistakes that would be picked out by the committee at once. If he was like other permanent Government officials, he certainly would have overlooked this or missed the point of that. You would find more mistakes in that expert's bill picked out by the Committee on Immigration than he could pick out in the final bill the Committee on Immigration would draft."

* *

Mr. Ernest Bruncken, Connected with the Legislative Reference Bureau of California. "If you will permit me, Mr. Chairman, I should like to say just a few words in connection with this last thing that was broached by the gentleman from Massachusetts. I think it will become plain to him why we advocate a bureau of this kind—that is, the bill-drafting side of it—if he takes this into consideration: Undoubtedly the members of these various committees are much more expert on the subject matters with which they deal than any member of the reference bureau, either in the bill-drafting or in the reference department proper, can ever expect to be, because they have so many things to do, assuming even that they have the same ability that the distinguished men in these committees may have. But have you ever thought that a man who is very much interested in a subject matter is the very last one to see the many objections which may arise in the minds of others, including the attorneys who will attack those bills in court and, possibly, the judges? * * *

"During the first session (in California) when the work was new to me and to them, there were comparatively few who came. The second session I had a great many more, and the third session it was very evident that unless I had considerably more assistance than I did have I simply could not keep up with the demand. It became evident to everybody. So that it was very apparent that there was a constant demand for this work from members who were exceedingly anxious to do the work well and do it themselves. I remember cases where private members have sat with me evenings after the legislature adjourned, and sometimes until the wee small hours, discussing particular bills. After I had drafted them we went over them together, and very often we redrafted them, because they had not quite expressed the meaning or purpose which the member had in view, or else because in discussing it he had changed his views as to the details of the bill."

Mr. Gardner. "I had a very complicated bill to treat the other day, with regard to the United States taking part in the International Council for the Exploration of the Seas, a matter that interested me because I represent a fishery district. If I could have put the drafting of that bill off on some one else, I should have done so. It was a great deal better for the bill and its chances of passage that I should puzzle it out myself."

The Chairman (Mr. Slayden, of Texas) "Wouldn't you learn a few things that are important, but not so much about many things that way, digging it out yourself?"

Mr. Gardner. "Yes; and that is why I believe we are all, sooner or later, bound to be specialists here. That is the way legislation has got to be carried on, more or less. For instance, I make a specialty of the fisheries. When I explain the International Council for the Exploration of the Seas, I know what I am talking about. That is the only way that I can see in which legislation can be carried on. Smatterers are absolutely useless except to vote and to make speeches for home consumption. * * *

"I will admit at once that there are a great many cases where I can see the usefulness of this bureau. I am very much afraid that it would be abused, and would result in Members being less familiar with the matters on which they are legislating than they ought to be. I am differentiating now between the drafting bureau, which seems to me to be probably a short cut to work which Members ought to do for themselves, and the reference bureau. In many instances if Members could have their bills drawn for them, they would know so little about them as to imperil their passage. * * *"

* *

Mr. Nelson (A Member of Congress from Wisconsin). "Mr. Chairman, I just want to say that I do not care to detain the committee any longer. * * * It seems to me that there are three things at least that we are agreed upon from the trend of the discussion here.

"First, the desirability of an institution of this kind that will relieve Members of Congress of the clerical drudgery of collecting data and information in the preparation of laws, so that we may concentrate on principles and policies. Second, the necessity of improving the form of legislation through skilled men trained in the technique of law forms, who will act for us in the way of the form of legislation, as we now have parliamentary experts assist us in parliamentary procedure; and, third, it appears to me clear that we must have these united; that the substance is conditioned on the form, and the form on the substance and to separate them would be a fundamental and fatal defect. * * *"

(The excerpts printed above are taken from the report of hearings printed as Senate Document No. 1271 (62d Congress).

In the Nation's Business, which will be published November 15, additional material on the subject

pressed in all parts of the country, and to register a definite vote on the proposition within 45 days of the date of mailing of pamphlet. One vote may be cast for each delegate to which the member is entitled in the annual meeting.

If the question shall be approved on this submission under the same terms as in section four of this article, it shall be certified to the Board of Directors as having passed and action by the Board shall follow.

SECTION 6. **(Reference to Annual Meeting.)** If on second consideration by mail, as herein provided for, a question shall fail to receive the vote necessary for its passage, but shall have received one-third of the votes cast, it shall be placed upon the program for consideration and action at the next annual meeting.

SECTION 7. Upon approval by the Council or Board of Directors a member may be permitted by petition to place upon the program for consideration at the annual meeting a question which has not been submitted in advance by mail as hereinbefore provided for, but such a question shall not be considered if one-third of the delegates present object thereto, and its submission by mail as hereinbefore provided for shall be ordered on the recording of a two-thirds vote in favor of that method of procedure.

SECTION 8. On all questions before a meeting of this Chamber on which a vote is taken *viva voce,* or by division, each duly accredited delegate from an organization member shall be entitled to one vote in person. A yea and nay vote may be ordered on any question upon demand of one-fourth of the delegates present officially representing such organization members and on such ballot only the votes of said members shall be counted. On all yea and nay votes each organization member shall be entitled to as many votes as there are delegates present representing said member. All yea and nay votes shall be fully recorded and published in the proceedings. An affirmative vote of two-thirds shall be necessary to carry the approval of the Chamber of Commerce of the United States of America upon any proposition or resolution which may appear upon the official program or be added thereto as provided for by these By-Laws, provided, however, that such a vote shall be void and of no effect unless the attendance at the meeting shall represent one-third of the voting strength of the Chamber from at least twenty (20) states.

SECTION 9. **(General Provisions.)** (1) If on the first submission of a question less than one-third of the votes cast favor the proposal it shall not be advanced for second consideration in the form of a pamphlet except with the approval of the Board of Directors, provided, however, that upon petition of the proposing member with the indorsement of ten additional organization members from as many states the Board of Directors shall order second consideration of the question by mail. If it shall fail to receive one-third of the votes cast on original submission as hereinbefore provided for the Board of Directors may, however, place it upon the program for discussion at the annual meeting.

(2) The list of questions to be considered at each annual meeting shall be mailed to each member at least 30 days in advance of such meeting.

(3) No pamphlet prepared for second consideration as above set forth shall be mailed to the members of the Chamber less than 40 days before the annual meeting.

(4) No question shall be received from an organization member for submission to the Chamber by mail or at the annual meeting within 40 days of the date of said annual meeting, unless by a two-thirds vote of the Board of Directors.

(5) If any organization member shall refrain from expressing opinion on a question submitted by mail, and said question having failed of passage is referred to the annual meeting, said member shall not be entitled to the privilege of the floor for the purpose of debating said question, except by a three-fourths vote of the delegates present.

(6) If a question has been submitted by mail and the time for registration of votes respecting it has not expired before notice of the annual meeting is sent out, it shall be considered as a pending question and shall go upon the program for action at the annual meeting.

(7) On a question submitted to referendum no organization member found to have voted with the minority shall be deemed to impair its standing in this Chamber by adhering to its position or by continuing its efforts in support thereof.